

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.2130 Investment Credit; High Impact Business (IITA 201(h))

TITLE 86: REVENUE

PART 100

Section 100.2130 Investment Credit; High Impact Business (IITA 201(h))

- a) Subject to the minimum investment requirements of Section 5.5 of the Illinois Enterprise Zone Act, a taxpayer shall be allowed a credit against the tax imposed by IITA Sections 201(a) and (b) for investment in qualified property which is placed in service in a federally designated Foreign Trade Zone or Sub-Zone located in Illinois by a Department of Commerce and Community Affairs designated High Impact Business. The credit is reported on Schedules 1299 A, C or D. Recapture (see subsection (i) below) is computed on Schedule 4255.
- b) The credit shall be .5% of the basis for such property.
- c) The credit shall not be available until the minimum investments in qualified property set forth in Section 5.5 of the Illinois Enterprise Zone Act have been satisfied and shall not be allowed to the extent that it would reduce a taxpayer's liability for the tax imposed by IITA Sections 201(a) and (b) to below zero. The credit applicable to such minimum investments shall be taken in the taxable year in which such minimum investments have been completed. The credit for additional investments beyond the minimum investment by a designated high impact business shall be available only in the taxable year in which the property is placed in service and shall not be allowed to the extent that it would reduce a taxpayer's liability for the tax imposed by IITA Sections 201(a) and (b) to below zero. The minimum investments required by Section 5.5 of the Illinois Enterprise Zone Act are:
 - 1) \$12,000,000 which will be placed in service in qualified property with an intention to create 500 full-time equivalent jobs at a designated location in Illinois, or
 - 2) \$30,000,000 which will be placed in service in qualified property with the intention to retain 1,500 full-time jobs at a designated location in Illinois.

The Illinois Department of Commerce and Community Affairs must certify that the minimum investment requirements have been met.

- d) For tax years ending on or after December 31, 1987, the credit shall be allowed for the tax year in which the property is placed in service, or, if the amount of the credit exceeds the tax liability for that year, whether it exceeds the original liability or the liability as later amended, such excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a liability. If there is a credit from more

than one tax year that is available to offset a liability, the credit accruing first in time shall be applied first.

e) The term "qualified property" means property which is:

- 1) tangible, whether new or used;
 - A) Tangible property includes objects or things that are physically capable of being touched and seen and over which a person may assert rights of ownership.
 - B) Tangible property consists of personalty or realty and includes such items as buildings, structural components of buildings, machinery, equipment and vehicles.
 - C) Items such as stock certificates, bonds, notes and the like are not tangible personal property. While the certificate or paper may be tangible, the item itself, the share of ownership of a corporation or the promise to pay is an intangible that is memorialized by the paper.
 - D) The terms "new or used" shall have their commonly ascribed meanings.
- 2) depreciable pursuant to IRC Section 167, except that "3-year property" as defined in IRC Section 168 is not eligible for the credit provided by IITA Section 201(h);
 - A) Depreciable property is property used in the trade or business of a taxpayer, or held for production of income, which is subject to wear and tear, exhaustion, or obsolescence.
 - B) Property that is depreciated under the Modified Accelerated Cost Recovery System (MARCS), as provided by IRC Section 168, is considered depreciable pursuant to IRC Section 167 for purposes of the Enterprise Zone Investment Credit.
 - C) Examples of tangible property that is not depreciable include land, inventories or stock-in-trade, natural resources, and coin or currency.
 - D) The provisions of Internal Revenue Service regulation Section 1.167(a)-4 will be utilized in making determinations as to whether particular leasehold improvements are depreciable.
- 3) acquired by purchase as defined in IRC Section 179(d); and
 - A) A purchase is any acquisition of property except:
 - i) an acquisition from a person whose relationship to the acquiring person is such that a resulting loss would be disallowed under IRC Sections 267 or 707(b);

- ii) an acquisition by one component member of a controlled group from another component member of the group;
 - iii) an acquisition of property if the basis of the property in the hands of the person acquiring it is determined in whole or in part by its adjusted basis in the hands of the person from whom the property was acquired; or
 - iv) an acquisition of property, the basis of which is determined under IRC Section 1014(a). IRC Section 1014(a) covers property received from a decedent. Property acquired by bequest or demise is not acquired by purchase.
- B) For purposes of determining whether property is acquired by purchase as defined by IRC 179(d), the family of an individual includes only his spouse and ancestral and lineal descendants of the individual and his spouse.
- C) For purposes of determining whether property is acquired by purchase only, a controlled group has the same meaning as in IRC Section 1563(a), except stock ownership of only 50% or more is required (also see IRS Regulation Section 1.179-4(f)).
- D) Property that the taxpayer constructs, reconstructs or erects is generally considered acquired by purchase.
- 4) not eligible for the Enterprise Zone Investment Credit provided by IITA Section 201(f).
- f) The basis of qualified property shall be the basis used to compute the depreciation deduction for federal income tax purposes.
 - 1) In computing the amount of credit available for a taxable year, the credit rate will be applied to the total basis of all qualified property that is placed in service by a high impact business located in a foreign trade zone or sub-zone in Illinois during the taxable year, provided the property continues to qualify on the last day of the taxable year.
 - 2) If the basis of the property for federal income tax depreciation purposes is increased after it has been placed in service in a federally designated foreign trade zone or sub-zone located in Illinois by the taxpayer, the amount of such increase shall be deemed property placed in service on the date of such increase in basis.
 - 3) Property that has been fully expensed under IRC Section 179 has no federal depreciable basis with which to compute the credit. Property not fully expensed under IRC 179 can still qualify for the credit.

- g) *The term "placed in service" shall have the same meaning as under IRC Section 46. (IITA Section 201(h)(5))* Property is placed in service for purposes of the credit in the earlier of the following years:
- 1) That in which, under the taxpayer's depreciation practice, depreciation begins on the property; or
 - 2) that in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.
- h) If, during any taxable year ending on or before December 31, 1996, any property ceases to be qualified property in the hands of the taxpayer within 48 months after being placed in service in a foreign trade zone or sub-zone, or the situs of any qualified property is moved outside Illinois within 48 months after being placed in service, the tax imposed under IITA Section 201(a) and (b) of this Section for such taxable year shall be increased.
- 1) Any property disposed of by the taxpayer within 48 months after being placed in service ceases to qualify.
 - A) A taxpayer disposes of property when he sells the property, exchanges or trades-in worn-out property for new property, abandons the property or retires it from use.
 - B) Property destroyed by casualty, stolen, or transferred as a gift is disposed of property.
 - C) Property that is mortgaged or used as security for a loan is not disposed of property, provided that the taxpayer continues to use the property in its business within a foreign trade zone or subzone located in Illinois.
 - D) Property transferred to a trustee in bankruptcy is considered disposed of property.
 - E) A transfer of property by foreclosure is a disposition of property.
 - F) A reduction in the basis of qualified property resulting from a redetermination of the purchase price of the property is a disposition of property to the extent of such reduction in basis in the year in which the reduction takes place. For example, this would occur when property is purchased and placed in service in one year, and in a later year the taxpayer receives a refund of a portion of the original purchase price.
 - 2) Any property converted to personal use ceases to qualify for the credit.
 - 3) The increase in tax shall be determined by:
 - A) recomputing the investment credit which would have been allowed for the year in which credit for such property was originally allowed by eliminating such property from such computation, and

- B) subtracting such computed credit from the amount of credit previously allowed. The difference between the recomputed credit and the credit actually claimed is added to the income tax for year in which the property ceased to qualify.

EXAMPLE: In 1990, High Impact Business A places qualifying property with a basis of \$55,000 into service in Illinois and computes a credit for the year of \$275 ($\$55,000 \times .5\%$). High Impact Business A's 1990 income tax is \$275. After application of the credit, High Impact Business A has no remaining income tax liability. In the following year, High Impact Business A moved a qualifying asset having a basis of \$5,000 from Illinois to Missouri and is required to recapture a portion of the credit applied against its 1990 income tax liability. The credit applied against High Impact Business A's income tax must be recaptured because the property was moved outside of Illinois and no longer qualifies for the credit. In order to determine its additional income tax for 1991, High Impact Business A must re-compute its 1990 credit by eliminating the disqualified property ($\$55,000 - \$5,000 \times .5\% = \$250$). This recomputed credit is subtracted from the credit actually used in 1990 against the income tax ($\$275 - \$250 = \$25$) and the difference is added to High Impact Business A's 1991 income tax.

- i) If, during any taxable year ending after December 31, 1996, a taxpayer who has been allowed a credit under IITA Section 201(h) relocates its entire facility in violation of the explicit terms and length of the contract under Section 18-183 of the Property Tax Code, the tax imposed under subsections (a) and (b) of this Section shall be increased for the taxable year in which the taxpayer relocates that facility by an amount equal to the amount of credit received by the taxpayer under this IITA Section 201(h) with respect to qualified property placed in service at that facility.

(Source: Amended at 24 Ill. Reg. 10593, effective July 7, 2000)